

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 6, 2009

STATE OF TENNESSEE v. JAMES ANTHONY HILL

**Direct Appeal from the Circuit Court for Marshall County
No. 17718 Robert Crigler, Judge**

No. M2008-01612-CCA-R3-CD - Filed April 20, 2009

The defendant, James Anthony Hill, was convicted by jury of two counts of forgery between \$500 and \$1000 and one count of theft between \$500 and \$1000. The trial court merged the defendant's forgery convictions and sentenced the defendant as a career offender to an aggregate sentence of six years to be served consecutively to any other unexpired sentences. On appeal, the defendant challenges the sufficiency of the convicting evidence. After a thorough review of the record, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which ALAN E. GLENN and CAMILLE R. McMULLEN, JJ., joined.

Michael J. Collins, Shelbyville, Tennessee, for the appellant, James Anthony Hill.

Robert E. Cooper, Jr., Attorney General and Reporter; Matthew Bryant Haskell, Assistant Attorney General; Charles Crawford, District Attorney General; Weakley E. Barnard and Kate Lavery, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

The defendant was indicted by a Marshall County Grand Jury on two counts of forgery between \$500 and \$1000 and one count of theft between \$500 and \$1000. The following relevant evidence was presented at trial: On June 6, 2007, the defendant and his mother drove to the Lewisburg Bank of America. The defendant entered the bank in order to cash a check for \$650 while his mother waited in the car. The defendant approached the teller and told her that he was cashing a check "for work." The check was issued from the bank account of a construction company, owned and operated by Roy Dillon, the account holder. Upon inspection of the check, the bank teller observed that the check appeared to have been altered. The check was written in one color of ink

and then altered with another color of ink. All of the original writing on the check had been traced in another color. The teller also observed that the check was altered to show the defendant's name in the payee line, but his name was marked with extra flourishes and alterations. Although not entirely positive, these alterations raised the teller's suspicions that the check was forged. The teller then got the defendant's identification and had the defendant place his thumb print on the check.

With her suspicions raised, the teller checked Mr. Dillon's account for electronic images of other checks written from the same account. The teller noticed that Mr. Dillon had not written any other checks to the defendant, and Mr. Dillon had not made it a practice of writing anything in the "memo line" of issued checks, which differed from the check the defendant wanted cashed. The teller attempted to call Mr. Dillon several times but was unsuccessful. After leaving messages with Mr. Dillon about the check, the teller reluctantly cashed the check on her manager's approval. Shortly thereafter, Mr. Dillon called back and informed her that he had not written a check to the defendant. Mr. Dillon specifically remembered that the particular check cashed, as recorded in his checkbook, was written to Sharon Dillon, his ex-wife, as her weekly alimony payment. A close examination of the check, which was introduced as an exhibit at trial, reveals that the payee name on the check, Sharon Dillon, was altered to reflect the defendant's name, "James A. Hill."

The teller then called the defendant's mother, who was well-known at the bank and had been seen waiting on the defendant outside while he was in the bank. The teller informed the defendant's mother that the check was stolen and that the money should be returned. The defendant's mother told the teller that the defendant had left the majority of the cash with her and left to go to the tobacco store. The defendant's mother returned the majority of the cash to the bank. Meanwhile, the defendant was picked up by police and returned to the bank. The defendant admitted to police that he had cashed the check at the bank earlier in the day, but he maintained that he worked for the construction company listed on the check. It was established by statements from the defendant's mother that the defendant left early on Monday morning for Nashville and returned from Nashville either Monday or Tuesday evening. The defendant's route to Nashville from his mother's house took him directly past Sharon Dillon's mailbox.

Based on the evidence presented, the jury found the defendant guilty of two counts of forgery between \$500 and \$1000 and one count of theft between \$500 and \$1000. The defendant's forgery convictions were merged. Thereafter, the defendant received a total effective sentence of six years as a career offender to be served consecutively to any other unexpired sentences.

ANALYSIS

On appeal, the defendant challenges the sufficiency of the convicting evidence. Specifically, the defendant argues that he did not engage in conduct that would lead a rational trier of fact to believe he committed forgery and theft. He argues that a "reasonable person intending to commit a crime would not go into a bank that his mother banks at regularly to cash a forged check . . . [and] would not willingly give a fingerprint when cashing a forged check."

We begin our review by setting forth the well-established rule that once a jury finds a defendant guilty, his or her presumption of innocence is removed and replaced with a presumption of guilt. *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992). Therefore, on appeal, the convicted defendant has the burden of demonstrating to this court why the evidence will not support the jury's verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000); *State v. Tuggle*, 639 S.W.2d 913, 914 (Tenn. 1982). To meet this burden, the defendant must establish that no "rational trier of fact" could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Evans*, 108 S.W.3d 231, 236 (Tenn. 2003); see Tenn. R. App. P. 13(e). In contrast, the jury's verdict approved by the trial judge accredits the state's witnesses and resolves all conflicts in favor of the state. *State v. Harris*, 839 S.W.2d 54, 75 (Tenn. 1992). The state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which may be drawn from that evidence. *Carruthers*, 35 S.W.3d at 558. Questions concerning the credibility of the witnesses, conflicts in trial testimony, the weight and value to be given the evidence, and all factual issues raised by the evidence are resolved by the trier of fact and not this court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997). We do not attempt to re-weigh or re-evaluate the evidence. *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006). Likewise, we do not replace the jury's inferences drawn from the circumstantial evidence with our own inferences. *State v. Reid*, 91 S.W.3d 247, 277 (Tenn. 2002). These rules are applicable to findings of guilt predicated upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999).

Relevant to the instant case, "[a] person commits an offense who forges a writing with intent to defraud or harm another." Tenn. Code Ann. § 39-14-114(a). "Forge" means to "[a]lter, make, complete, execute, or authenticate any writing so that it purports to . . . [b]e the act of another who did not authorize that act[.]" *Id.* at 114(b)(1)(A). Forge also means to "[p]ossess a writing that is forged within the meaning of subdivision (b)(1)(A) with intent to utter it in a manner specified in subdivision (b)(1)(C)." *Id.* at (b)(1)(D). "'Writing' includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and symbols of value, right, privilege, or identification." *Id.* at 114(b)(2). "The offense is complete by the forgery with fraudulent intent, whether any third person be actually injured or not. It is sufficient [that] the instrument forged, with the fraudulent intent, might have been prejudicial to the rights of another." *State v. James*, 688 S.W.2d 463, 466 (Tenn. Crim. App. 1984) (citation omitted).

"A person commits theft of property if, with intent to deprive the owner of property, the person knowingly obtains or exercises control over the property without the owner's effective consent." Tenn. Code Ann. § 39-14-103.

Taken in the light most favorable to the state, the evidence shows that the defendant had the means and opportunity to take Sharon Dillon's alimony check from her mailbox without her consent. He then presented the forged check at the bank, endorsed it, and received money as a result. There is ample evidence in the record establishing that the defendant knowingly altered and presented the check to the bank and that he did so in an effort to deceive and defraud others, including Roy Dillon, Sharon Dillon, and Bank of America. There is also ample evidence that the defendant exercised

control over the check without the consent of either Sharon Dillon or Roy Dillon. Accordingly, we conclude that the evidence was sufficient to sustain the defendant's convictions, and he is not entitled to relief on this issue.

CONCLUSION

Based on the foregoing reasoning and authorities, the judgments of the trial court are affirmed.

J.C. McLIN, JUDGE